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Supreme Court, U.S.
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No. 01-494

In The

Supreme Court of the United States

JAY SEGAL,

Petitioner,

v.

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29(6) of the Rules of the Supreme Court of the United States, respondent Massachusetts Mutual Life Insurance Company ("MassMutual") identifies the following parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates that have issued shares to the public:

Parent Companies:

None.

Subsidiaries (except wholly-owned subsidiaries):

Oppenheimer Funds, Inc., David L. Babson and Company, Inc., Cornerstone Real Estate Advisers, Inc., MassMutual International Inc., MML Investors, Inc.

Affiliates:

MassMutual is the successor by merger to Connecticut Mutual Life Insurance Company and is the surviving company from that merger.

STATEMENT OF THE CASE

A. Introduction.

None of the questions presented by petitioner are worthy of review on certiorari. Instead, the questions devolve into asking this Court to act as an appellate court to upset decisions of the district court, sitting in diversity, and court of appeals, as to settled issues of state law and discretionary procedural rulings. Petitioner's first question erroneously asserts that by upholding the summary judgment in this state law contract matter, the court of appeals' ruling was inconsistent with Article III of the Constitution, the Fifth Amendment (due process) and the Seventh Amendment (right to jury trial). However, petitioner does not provide any legal analysis to support such contentions, and instead relies only on conclusory references. The transparency of petitioner's constitutional references is self-evident. No constitutional provision has been violated. Petitioner next claims, without basis or justification, that the court of appeals made erroneous factual findings and misapplied California law. There is no compelling basis for review on certiorari on these purported grounds. Petitioner's third question, regarding the decision by the court of appeals to decline a passing suggestion to certify state law issues to the California Supreme Court, does not merit review on certiorari because denial of certification was appropriate and well within the proper exercise of the court's discretion. Petitioner's fourth question involves the request to amend his complaint post-judgment. Again, the request for post-judgment amendment was not only properly denied, but is also not subject to a claim for abuse of discretion.

Because there is no compelling reason to grant the requested writ of certiorari, respondent respectfully submits that the writ be denied.

B. Factual Background.

In April 1992, Massachusetts Mutual Life Insurance Company ("MassMutual") issued a disability insurance policy ("original policy") to petitioner which contained, among other things, a Maximum Benefit Period "to Expiration Date, But Not Less Than 2 Years." The annual premium for the original policy was $2,106.36. Under the original policy and ordinary contract law, petitioner was allowed to apply for changes to the Maximum Benefit Period.

In August 1995, while the original policy was in force, petitioner submitted a claim. MassMutual processed the claim under the original policy which was in force at the time, making periodic benefit payments to petitioner. In November 1995, petitioner reported his complete recovery and the disability insurance benefits were terminated. There is no dispute as to MassMutual's complete performance under the original policy.

In February 1996, petitioner submitted a written application to reduce the Maximum Benefit Period to 2 years. Petitioner also requested that all changes be made effective as of March 21, 1996. MassMutual accepted petitioner's proposed policy changes. In consideration for the policy changes to reduce coverage, petitioner's policy

premiums were reduced to $735.38 per year. The insurance policy ("modified policy") was reissued in writing and memorialized the agreed upon changes.

In June 1996, petitioner asserted that he was again disabled as of May 22, 1996. Thus, according to the modified policy, petitioner's Maximum Benefit Period was two years. After two years of benefits were paid, payments were terminated.

ARGUMENT

The petition should be denied because it fails to demonstrate any compelling reason to grant review. Rules of the Supreme Court of the United States, Rule 10. Petitioner has not satisfied any of the guidelines for review pursuant to Supreme Court Rule 10. Indeed, Rule 10 admonishes petitioner: "A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Here, without identifying any compelling reason for extraordinary treatment, petitioner complains only about matters on which this Court rarely grants review.

It is telling that the petition is devoid of any legal analysis regarding petitioner's first question. Contrary to petitioner's bald assertion, the court of appeals' decision to affirm the summary judgment was consistent with Article III of the Constitution, the Fifth Amendment (due process) and the Seventh Amendment (right to jury trial). Petitioner's argument would elevate the grant of every

summary judgment to a constitutional question for this Court to resolve.

Petitioner's second question asserts erroneous factual findings and misapplication of law in connection with granting summary judgment in favor of MassMutual. The assertion is wrong on both counts. Furthermore, Rule 10 suggests the impropriety of asserting such grounds as the basis for review on certiorari. Indeed, this Court generally accords "great deference to the interpretation and application of state law by the courts of appeals." *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 786-787, 117 S.Ct. 1734, 1737 (1997) (citation omitted). Nothing presented by the petition demonstrates any compelling reason to deviate from such deference. In short, petitioner's disappointment with the district court's application of facts to law and the granting of summary judgment in favor of MassMutual, and with the court of appeals' proper affirmance of the summary judgment (as to which *en banc* review was denied), supplies no compelling reason why this Court should review a decision that was based upon settled law.

Petitioner's third question does not merit review on certiorari because certification to the California Supreme Court was both unnecessary and inappropriate. Petitioner has not offered any evidence of abuse of discretion in this regard. California law (including the "process of nature" rule) is well-developed, and the court of appeals correctly recognized that it did not apply in this case. Petitioner's repeated misstatements and misapplications of the process of nature rule and various Insurance Code Sections were properly rejected by the court of appeals. The opportunity to obtain the benefit of the state

Supreme Court's views on issues of state law should be reserved for unsettled issues that would be important to, if not dispositive of, the federal court action. Petitioner seeks to turn this exceptional process into a routine level of additional review available to every disappointed litigant.

Petitioner's fourth question erroneously suggests that he should have been allowed to amend his complaint post-judgment. The request for post-judgment amendment was properly denied because it was nothing more than an effort to reassert old claims cloaked in new legal theories. Nor was there any showing whatsoever that the courts below abused their discretion in rejecting the amendment, since petitioner failed to show the existence of previously-unavailable evidence, clear error of law, or intervening change in controlling law to support his request. Accordingly, there is no compelling reason to review this question on certiorari.

CONCLUSION

For all of the reasons discussed above, respondent respectfully submits that this Court should deny the petition for writ of certiorari.

Respectfully submitted,

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